Reconsideration of the patentability of applicants' claimed invention is requested

respectfully.

Status of the Claims

The Examiner's Action addressed all of applicants' pending claims (Claims 18 to

21 and 23 to 45) and constituted a rejection of all of those claims. Claims 18 to 21 and 23

to 37 and 39 to 45 have been cancelled. The amendment of Claim 38 and the addition of

Claim 46 to 57 are requested respectfully. Upon entry of the requested amendments, there

would be presented for the Examiner's consideration Claims 38 and 46 to 58, which total

in number 14, of which Claim 38 is the only claim which is in independent form. The

total number of claims and of independent claims is less than paid for at the time of filing

of the present application. Accordingly, no claim fee is due.

The proposed amendment to Claim 38 includes the subject matter of paragraphs (i)

and (ii) of Claim 18 (to be cancelled upon entry of the amendments).

For the Examiner's convenience there are set forth below bases for added Claims

46 to 58, all of which are in dependent form and all of which correspond to a previously

pending dependent claim.

Added Claims

Previous Pending Dependent Claims

46

39

7

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Synnestvedt & Lechner Llp Group Art Unit 1616 Application No. 10/019,822	April 21, 2006 Attorney Docket No. P22,901-A USA
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The Examiner's attention is directed to applicants' Reply dated March 1, 2005, the paragraph bridging pages 17 and 18 and the last paragraph on page 18 for a summary of applicants' claimed invention.

Summary of the Examiner's Rejections

The Examiner's Action includes a rejection of all of applicants' claims in four different §103(a) rejections which differ one from the other by citation of different combinations of references. By virtue of the claim amendments which are requested herein, the only applicable §103(a) rejection is that which the Examiner has asserted

against Claim 38. (The other of the Examiner's §103 rejections are not asserted against Claim 38 and all of the claims against which they have been asserted will be cancelled upon entry of the present amendments.) Accordingly, the only one of the four §103 rejections that needs to be addressed is the §103 rejection of Claim 38.

The Examiner's Action includes also rejections under 35 U.S.C. §112 of Claims 18 to 21, 23 to 45.

The Examiner's §112 and §103 rejections are discussed below.

Discussion of the §112 Rejections

With respect to the Examiner's rejection of independent Claim 18, as mentioned above, the entry of the present amendments will result in a cancellation of Claim 18 and the addition of the subject matter of paragraphs (i) and (ii) thereof to independent Claim 38. It is submitted respectfully that the Examiner's rejection of Claim 18 was not proper and, therefore, it is submitted that it is not applicable to Claim 38 in its proposed amended form.

The §112 rejection of the claims which define the erythromycin gel as having a viscosity of about 200,000 to about 500,000 cps is traversed respectfully. The Examiner's attention is directed to the present application, page 25, first sentence which states that particularly preferred embodiments of the invention include gels, each of which has a viscosity of about 200,000 to about 500,000 cps.

With respect to the Examiner's rejection of Claim 23, which is proposed to be added to the present application as Claim 52, it is submitted respectfully that the subject matter of Claim 23 which has been objected to by the Examiner is referred to in the present application on page 26 at lines 26 to 29.

With regard to the Examiner's rejection of Claims 42, 43 and 39, these claims which are proposed to be added respectively as Claims 49, 50, and 46 are in a form which takes into account the Examiner's objections to their earlier form.

The Examiner's §112 rejection of Claim 38 is addressed after applicants' discussion of the Examiners §103 rejection of Claim 38.

Discussion of the §103 Rejection of Claim 38

The Examiner considers Claim 38 as unpatentable over the disclosure of WO 99/02133 to Lefevre et al in view of the disclosure of WO 97/27841 TO Edens et al. The rejection is traversed respectfully.

As mentioned above, upon entry of the present amendments, the subject matter of Claim 18, as set forth in paragraphs (i) and (ii) thereof, will be incorporated into Claim 38. This subject matter relates to the viscosity of each of the gels referred to in Claim 38 and the concentrations of the ingredients comprising the composition formed from the gels.

It is requested respectfully that the Examiner enter the amendment to Claim 38 as placing the claim in condition for allowance or in better form for consideration on appeal. It is submitted that the amended claim does not require any additional

searching because the record is clear that the Examiner has conducted searches that were designed to locate prior art that is related to applicants' "gel" compositions, as well as to compositions comprising the mixed gels, and also searches for prior art that relates to the "package" aspects of the present development and compositions contained in such packages.

The following discussion points out that neither the primary reference (Lefevre et al.) nor the secondary reference (Edens et al.) discloses the "gel" aspects of Claim 38 nor the "package" aspects of Claim 38. Accordingly, the combined disclosures of the primary and secondary reference do not result in the subject matter of Claim 38.

With respect to the "gel" aspects of Claim 38 and the Examiner's reliance on the primary reference, applicants acknowledge that this reference does in fact teach gel formulations, as pointed out by the Examiner on page 2 of the Action. However, it is clear from an overall reading of the primary reference that there is no disclosure in this publication respecting erythromycin's being in a gel form.

The primary reference discloses generally that the erythromycin constituent can be used in the form of a solution (for example, dissolved in ethanol) or in the form of a suspension (see the primary reference, page 5, lines 18 to 29). The term "suspension" is a generic term that applies broadly to particles dispensed in a fluid. Accordingly, there are species of suspensions which species are not gels. See Appendix (A) and Appendix (B) which are dictionary definitions respectively of the terms "suspension" and "gel".

Note particularly that the primary reference refers to benzoyl peroxide being in the form of a gel whereas erythromycin is referred to as being dissolved in ethanol in the presence of a thicking agent - no reference to a gel (see the primary reference, page 6, lines 9 to 21). Furthermore, the viscosities of the involved compositions are identified as between 500 and 5000 cps, whereas applicants' claims define the gels as having viscosities of at least about 200,000 cps, that is, at least 40 times higher than the aforementioned viscosities referred to in the primary reference.

Furthermore, Example 1 of the primary reference clearly teaches a composition comprising erythromycin, various solvents, and Carpobol Ultrex viscosifier and that such composition exits in the form of a "...clear solution..." (see the primary reference, the paragraph bridging pages 8 and 9, and particularly the sentence which bridges page 8 and 9). A clear solution is not a gel.

It is submitted respectfully that the disclosure of the primary reference simply does not disclose the use of erythromycin in the form of a gel.

The secondary reference cited in the §103 rejection is International Publication No. WO 97/27841 to Edens et al. At the bottom of page 13 through page 15 of the Action, the Examiner relies on DE 3630849 which is referred to on page 9 of Edens et al. for a teaching of applicants' claimed package. Applicants have reviewed Edens et al. and the U.S. publication which corresponds to DE 3630849, namely U.S. Patent No. 4,823,985. (A copy of this patent was provided to the Examiner in applicants'

Reply dated March 1, 2005 – see Appendix B thereof). Nothing relevant has been found in Edens et al that is not in the '985 patent.

In the '985 patent, two embodiments are disclosed. Figure 1, which illustrates the preferred embodiment, is not capable of being folded along a common side contrary to the Examiner's statement. There are no common sides in Figure 1 of the '985 patent, and even if there were, the two adjacent sides of chambers 2 and 3 would not be capable of being folded in the manner disclosed and claimed by applicants. The remaining embodiment found in the '985 patent does show, in Figure 2, a common wall 104 dividing the two compartments as shown in cross-section. However, there is no teaching or suggestion of how wall 104 might be folded. There is no mention of folding at all in the text of the patent. There would be no reason for folding as called for in Claim 38 since the portions of the packets of the reference from which the dispersing orifices are formed are already adjoining one another. Accordingly, the "package" aspects of applicants' Claim 38 distinguish over the Edens et al. disclosure and the '985 patent.

In summary, the combined disclosure of the primary and secondary references do not disclose either the "gel" aspects or the "package" aspects of Claim 38. It is requested that the involved §103 rejection be withdrawn.

Discussion of the Examiner's §112 Rejection of Claim 38

Entry of the present amendment to Claim 38 would modify the claim to recite

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viscosity ranges for the gels referred to therein and amount ranges for the benzoyl peroxide and erythromycin constituents comprising the gel composition defined in Claim 38.

As regards other of the Examiner's comments respecting Claim 38, the Examiner's attention is directed to the present application and the paragraph bridging pages 23 and 24, and particularly the last complete sentence on page 23 and continuing through the end of the paragraph on page 24.

The volume of composition dispensed from the packet is dependent on not only the force applied, but also on the viscosity of the composition.

In view of the above it is requested respectfully that the application be allowed in an early and favorable Action.

This Reply is accompanied by a request to extend the time to respond to the Examiner's Action and a Notice of Appeal.

Respectfully submitted, Synnestvedt & Lechner LLP

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pl.—veys 1 a detailed study or inspection, as by gathering information through observations, questionnaires, etc. and analyzing it 2 a general view; comprehensive study or examination (a survey of 2 a general view; comprenensive study or examination (a survey of Italian art) 3 a) the process of surveying a tract of land b) a tract surveyed c) a plan or written description of this

sur-vey-ing (sər va'in) n. 1 the act of one who surveys 2 the science or work of making land surveys

surveyor (-or) n. [ME surveior < OFr surveour] a person who surveys, esp. one whose work is surveying land surveyor's level an instrument consisting of a revolving telescope mounted on a tripod and fitted with cross hairs and a spirit level, used by surveyors in finding points of identical elevation

surveyor's measure a system of measurement used in surveying, based on the chain (surveyor's chain) as a unit; see CHAIN (n. 5a)

sur-viv-able (ser viv'e bel) adj. capable of surviving or being survived —sur-viv'abil'-ity n.

vived —sur-viv-apir-ity n.

Sur-vival (sər vi'vəl) n. 1 the act, state, or fact of surviving 2 someone or something that survives, esp. an ancient belief, cus-

tom, usage, etc.

SUr-Viv-al-ist (-ist) n. 1 someone strongly determined to survive 2 a person who takes measures, as storing food and weapons, living in a wilderness, etc., to ensure survival after an expected economic collapse, nuclear war, etc.

survival of the fittest nontechnical term for NATURAL SELECTION SUrvive (sar viv') vt. -vived', -viv'-ing [ME survive] (sar viv') vt. -vived', -viv'-ing [ME survive] < OFr surviver < L supervivere < super, above (see SUPER-) + vivere, to existence of; outlive 2 to continue to live after or in spite of /to survive a wreck/ -vi. to continue living or existing, as after an survivor (sar vivar) 0. 1 a person or thing that survives specif

event or after another's death SUI-Vi-Vor (say vi'ver) n. 1 a person or thing that survives; specif, a person who has survived an ordeal or great misfortune 2 a person regarded as resilient or courageous enough to be able to overcome hardship, misfortune, etc.

Sur-vi-vor-ship (sər vī'vər ship') n. 1 the state of being a survivor 2 Law the right of a surviving owner or owners of property held as under joint tenancy to undivided ownership upon the death of

sus- (sus, səs) pr suspend, sustain] prefix SUB-: used before c, p, and t [susceptible,

Susa (soo'sä) capital of ancient Elam, now a ruined city in W Iran Susa (soo'sa) capital of ancient Elam, now a ruined city in W Iran Susan (soo'zan) n. [Fr Susanne < LL(Ec) Susanna < Gr(Ec) Sousanna < Heb shoshana, lily a feminine name: dim. Sue, Susie, Suzy, var. Susanna, Susannah; equiv. Fr. Susanne, Suzanne Susannah or Susannan (soo zan's) n. 1 a feminine name: see elders whose advances she had spurned b) the book of the O.T. sus-cep-tance (so sep'tons) n. [r fol. + ANCE] Elec. a component and admittance, measured in siemens: it is the reciprocal of react-

ance

SUS-CEP-tibil-ity (so sep'to bil'o tē) n., pl. -ties [ML susceptibilitas]

1 the quality or state of being susceptible 2 [pl.] sensibilities; feelings 3 a susceptible temperament or disposition; capacity for receiving impressions 4 Physics the ratio of electric or magnetic that polarization in a material to the strength of the field producing susceptible (so could be) and TML susceptibile (so could be) and the susceptibile (so

that polarization

sus-cep-tible (so sep'to bol) adj. [ML susceptibilis < L susceptus, pp. of suscipere, to receive, undertake < sus- (see SUB-), under + capere, to take (see HAVE) easily affected emotionally; having a for; admitting; allowing /testimony susceptible of that gives a chance for; admitting; allowing /testimony susceptible of error/—susceptible to disease/—sus-cep-tible-ness n.—sus-cep-tible adv.

tible to easily influenced by or affected with (susceptible to disease)—sus-cep'-tible-ness n.—sus-cep'-tibly adv.

Sus-cep-tive (se sep'tiv) adj. [ML susceptivus] 1 SUSCEPTIBLE 2

RECEPTIVE—sus-cep-tiv-ity (sus'ep tiv'e) te) n. or sus-cep'-tive-ness Su-Shi (soo'she) n. [Jpn] a Japanese dish consisting of small cakes of cold cooked rice flavored with vinegar, typically garnished with of cold cooked rice havored with vinegar, typically gains strips of raw or cooked fish, cooked egg, vegetables, etc.

surps of raw or cooked usin, cooked egg, vegetables, etc.

Sus-lik (sus-lik) n. [Russ, gopher, akin to OSlav sysati, to whistle, buzz < IE echoic base *sūs- > Ger sausen, to whistle 1 a small ground squirrel (Citellus citellus) of NC Eurasia 2 its fur

ground squirrel (Citellus citellus) of NC Eurasia 2 its fur \$\frac{\text{SUS-pect}}{\text{suspecten}} < \text{L} \text{ usually, & for n. always, sus'pekt') vt.} \$\$ \frac{\text{FLME}}{\text{suspecten}} < \text{L} \text{ usually, & for n. always, sus'pekt') vt.} \$\$ up to, admire, also to mistrust < \sus. (see SUB-), under + \spicere, to look under, look look (see SPY) \$\frac{\text{I}}{\text{1}}\$ to believe (someone) to be guilty of something harmful, questionable, etc.; distrust 3 to think it probable or cion \text{-adj} \text{ usually suspecs} \text{-vi. to be suspicious; have suspicuspected, viewed with suspicion; suspected \text{-n. a person who is suspected, esp. one suspected of a crime, etc.} \$\$ \text{US-pend}\$ (so spend') vt. [ME suspenden < OFr suspendre < L

suspected, esp. one suspected of a crime, etc.

sus-pend (so spend') vt. [ME suspenden < OFr suspendre < L
suspendere, to hang up < sus-, for sub-, SUB- + pendere, to hang: see
PEND] 1 to bar or exclude as a penalty from an office, school,
cease or become inoperative for a time; stop temporarily (to suspend train service, to suspend a rule) 3 a) to defer or hold back
action on (a sentence, etc.) 4 to hang by a support from above so as
to allow free movement 5 to hold or keep (dust in the air, particles
in a liquid, etc.) in suspension 6 [Now Rare] to keep in suspense,
wonder, etc. 7 Music to continue (a note) into the following chord

-Vi. 1 to stop temporarily 2 to withhold payment of debigations, as through inability to pay -5 VN. EXCLUDE, And oongations, as through inability to pay —5YN. EXCLUDE, And sus pended animation (so spen'did) a temporary cessate the vital functions resembling death

the vital functions resembling deading sus-pend-ers (-darz) pl.n. 1 a pair of straps or bands passed the shoulders to hold up trousers or a skirt 2 [Brit.] garter

holding up stockings

Sus-pense (sə spens') n. [ME < MFr suspens, suspense, deferring < ML suspensum < L suspensus, suspended, under lit., hung up, pp. of suspended, to Suspended, undecided or undetermined 2 a state of usually anxious, and the growing interest and the series of events, etc. 4 [Rare] suspension or interruption, as of a novel suspense account Bookheeping an account interval and suspense account Bookheeping an account in the suspense in the suspense suspense account Bookheeping an account in the suspense in the suspense account Bookheeping an account in the suspense in the suspense in the suspense account Bookheeping an account in the suspense in t

legal right —sus pense it us au.

suspense account Bookkeeping an account in which items temporarily entered until their disposition can be determined. Asus-penser (sa spen'sar) n. [Informal] a suspenseful novel

etc.

SUS-pen-sion (so spen'shan) n. [ML suspensio < LL, an arching suspensus: see SUSPENSE] 1 a suspending or being suspensus: see SUSPENSE] 1 a suspending or being suspensus: specif., a) a temporary barring from an office, school, etc.; specif., a deferring of action on a sentence celing, as of rules d) a deferring of action on a sentence work upon or from which something is suspended 3 the system axles 4 the act or means of suspending the bance or pendon at timepiece 5 Chem. a) the condition of a substance in a timepiece 5 Chem. a) the condition of a substance of pendon particles are dispersed through a fluid but not dissolved in the condition of one having relatively large particles that will 6 Music a) the continuing of one or more tones of one chording rary dissonance is created b) the tone or tones so continued suspended from chains or cables which are anchored at either

Suspension oriuge a oriuge suspended from chains or cables which are anchored at either end and supported by towers at regular intervals

regular intervals
suspension point any of a
series of dots, properly three,
indicating the omission of a
word, phrase, sentence, etc., as
from something quoted
susceptible (see spen'siv) addi-

from something quoted

sus-pen-sive (sə spen'siv) adj.

[ML suspensivus] 1 that suspends, defers, or temporarily
stops something 2 tending to
suspend judgment; undecided 3
of, characterized by, expressing,
or in suspense 4 [Rare] of or
characterized by physical suspension—sus-pen'-sively adv.

Sus-pen-soid (-soid') n. [SUSPENS(ION) + (COLL)OID] a system
sus-pen-sor (-sər) n. [ML] 1 SUSPENSORY 2 Bot. a cell or ground

sond, colloidal particles suspended in a liquid

Sus-pen-sor (-sar) n. [ML] 1 SUSPENSORY 2 Bot. a cell or group

the endosperm

Sus-pen-sory (-sar) and suspensory 2 Bot. a cell or group

the endosperm

cells that forces the empryo of a higher plant the endosperm the endosperm

Sus-pen-Sory (-sə rē) adj. [< L suspensus (see SUSPENSE) + 10 ft suspending, supporting, or sustaining [a suspensory musel bandage] 2 suspending or delaying, esp. so as to leave something the suspensory musel or bandage 1 suspenso mesh fabric pouch for supporting the scrotum, on a band an

suspensory ligament any of various ligaments supporting suspensory ligament any of various ligaments supporting for organs; esp., a ligament supporting the lens of the eye suspection (sa spish'an) n. [ME suspecion < Anglo-Fr suspection or and sp. of L suspection, orig., a looking up to, esteeming, suspicere, to look up at, admire, look secretly at, mistrust, suspection in the act or an instance of suspecting guilt, a wrong, harmfulf etc. with little or no supporting evidence 2 the feeling or statement of a person who suspects 3 a very small amount or degradove suspicion not to be suspected, honorable—on suspicion pected.

sus-pi-cious (-as) adj. [ME suspecious < OFr < L suspiciosus]
arousing or likely to arouse suspicion in others 2 showing expressing suspicion 3 a) feeling suspicion b) tending habitually to suspect, esp. to suspect evil —sus-pi'-ciously adv. —sus-pi'-displayed.

ness n.

SUS-pire (sə spir') vi. --pired', --pir'.ing [ME suspiren < L suspire to breathe out < sub-, SUB- + spirare: see SPIRIT [Rare] to tallong, deep breath; esp., to sigh —-sus-pi-ra-tion (sus'pi ra'shan), name of an Iroquoian tribe in an unidentified Eastern Algonous flowing from central N.Y. through Pa. & Md. into Chesapeake 4444 mi (715 km)

Suss (sus) vt. [shortened < SUSPECT] [Slang, Chiefly Brit.] to figure out; grasp, as a result of investigation, study, or intuition: of with out

Sus-sex (sus'iks) n. any of a breed of domestic chicken, origing in Sussex, with speckled or reddish feathers, usually raised its meat

er land my & form [9] (sut lej 2 across ti 6 in Pakist 6 (sut ler) den, to do den, to do
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or, etc. to it
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iring. er land

ese. 2 Buda f. esp., an acc ta (soot's) fee (so te', so wife < sat, go indo widow wi feral pyre of h teeli-immola ger's Mill (s theast of Sacr fold rush of ; fon (sut'n) 000 thre (soo'cher) act of joining

act of joining such a join: such a join: such a join: sular line of j a) a more along and the act or all the act or all thread, with thread and all thread and all thread as with or as with or as with su abbrev. SPORT (800'vä) cap

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Fourth Edition

Michael Agnes
Editor in Chief

David B. Guralnik
EDITOR IN CHIEF EMERITUS



Geiss-ler tube (gis'lar) [after H. Geissler (1814-79), Ger inventor] a glass tube having two electrodes and containing a gas which, when electrified, takes on a luminous glow of a color characteristic of the gas: used in spectroscopy, etc.

of the gas: used in spectroscopy, etc.

gel (jel) n. [< GELATIN] 1 a colloidal form of matter characterized
by a jellylike texture, usually formed by cooling a colloidal solution
into a solid or semisolid phase: cf. SOL³, FOAM (sense 4) 2 any of
various jellylike preparations used to style and set hair, to clean
teeth, etc. 3 GELATIN (n. 3) —vi. gelled, gel'·ling 1 to form a gel;
jellify 2 [Brit.] JELL (vi. 2)

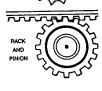
gel-ada (jel'a da, ja lä'-) n. [ModL, the species name; of Sem orig.] an Ethiopian baboon (*Theropithecus gelada*) characterized by a bare red patch on the chest: also gelada baboon

Ge-lan-de-sprung (go len'do shproon') n. [Ger < gelände, open terrain + sprung, a leap] Skiing a jump, as over an obstacle, made from a crouching position by propelling oneself with the ski poles See the inside front cover for pronunciation information.

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orkman's harness disk, etc.
ther or with
[often pl.] a
ears meshed
for one confrancher c) ch a system performing ring gear] — ighly accept-to furnish adapt (one another [to 3 Mech. júrnish with

vi. Mech. to , adjustment



own to adjust
Element goes
ment, with a GEARS
flie — gear up
the driven element goes faster than the
disequent decrease in torque 2 to accelhisequent decrease in torque 2 to accel-fic)/the factory geared up production — ement of gears providing the greatest Informall high speed or efficiency —In pinected to the motor 2 (not) in proper der —>low gear 1 the arrangement of led but great torque 2 [Informal] low segear the arrangement of gears provid-motion —>shift gears 1 to change from

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